

(b) *Rights of parties.* Every party shall be entitled to due notice of hearings, the right to be represented by counsel, and the right to cross-examine witnesses, present oral and documentary evidence, submit rebuttal evidence, raise objections, make arguments and move for appropriate relief. Nothing in this paragraph limits the authority of the Commission or the Administrative Law Judge to exercise authority under other provisions of the Commission's rules, to enforce the requirement that evidence presented be relevant to the proceeding or to limit cross-examination to the subject matter of the direct examination and matters affecting the credibility of the witness.

(c) *Examination of witnesses.* All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the Administrative Law Judge. A witness may be cross-examined by each adverse party and, in the discretion of the Administrative Law Judge, may be cross-examined, without regard to the scope of direct examination, as to any matter which is relevant to the issues in the proceeding.

(d) *Expert witnesses.* The Administrative Law Judge, at his discretion, may order that direct testimony of expert witnesses be made by verified written statement rather than presented orally at the hearing. Any expert witness whose testimony is presented in this manner shall be available for oral cross-examination, and may be examined orally upon re-direct following cross-examination.

(e) *Exhibits.* The original of each exhibit introduced in evidence or marked for identification shall be filed and retained in the docket of the proceeding, unless the Administrative Law Judge permits the substitution of copies for the original documents. A copy of each exhibit introduced by a party or marked for identification at his request shall be supplied by him to the Administrative Law Judge and to each other party to the proceeding.

[41 FR 2511, Jan. 16, 1976, as amended at 63 FR 55793, Oct. 19, 1998; 63 FR 68829, Dec. 14, 1998]

§ 10.67 Evidence.

(a) *Admissibility.* Relevant, material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence shall be excluded.

(b) *Official notice.* (1) Official notice may be taken of

(i) Any material fact which might be judicially noticed by a district court of the United States; or

(ii) Any matter in the public official records of the Commission.

(2) If official notice is requested or taken of a material fact, any party, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Objections.* A party shall timely and briefly state the grounds relied upon for any objection made to the introduction of evidence. If a party has had no opportunity to object to a ruling at the time it is made, he shall not thereafter be prejudiced by the absence of an objection.

(d) *Exceptions.* Formal exception to an adverse ruling is not required. It shall be sufficient that a party, at the time the ruling is sought or entered, makes known to the Administrative Law Judge the action he wishes the Administrative Law Judge to take or his objection to the action being taken and his grounds therefor.

(e) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness, or the Administrative Law Judge may, in his discretion, receive the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(f) *Affidavits.* Affidavits may be admitted by the Administrative Law Judge only if the evidence is otherwise admissible and the parties agree that affidavits may be used.

(g) *Official government records.* An official government record or any entry therein, when admissible for any purpose, may be evidenced by an official

publication thereof or by a copy attested by the officer having legal custody of the record or by his deputy, accompanied by a certificate that such officer has custody. If the office in which the record is kept is within the United States the certificate may be made by a judge of a court of record in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by any officer in the Foreign Service of the United States stationed in the foreign state or country in which the record is kept and authenticated by the seal of his office. A written statement signed by an officer having custody of an official record or by his deputy, that after diligent search, no record or entry dealing with a specific matter is found to exist, accompanied by a certificate as provided above, is admissible as evidence that the records of his office contain no such record or entry.

(h) *Entries in the regular course of business.* Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it shall appear that it was made in the regular course of business by a person who had a duty to report or record it.

§ 10.68 Subpoenas.

(a) Application for and issuance of subpoenas—(1) *Application for and issuance of subpoena ad testificandum.* Any party may apply to the Administrative Law Judge for the issuance of a subpoena requiring a person to appear and testify (subpoena ad testificandum) at the hearing. All requests for the issuance of a subpoena ad testificandum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. A subpoena ad testificandum shall be issued

upon a showing by the requesting party of the general relevance of the testimony being sought and the tender of an original and two copies of the subpoena being requested, except in those situations described in paragraph (b) of this section, where additional requirements are set forth.

(2) *Application for subpoena duces tecum.* An application for a subpoena requiring a person to produce specified documentary or tangible evidence (subpoena duces tecum) at any designated time or place may be made by any party to the Administrative Law Judge. All requests for the issuance of a subpoena duces tecum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. Except in those situations described in paragraph (b) of this section, where additional requirements are set forth, each application for the issuance of a subpoena duces tecum shall contain a statement or showing of general relevance and reasonable scope of the evidence being sought and be accompanied by an original and two copies of the subpoena being requested, which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

(3) *Standards for issuance of subpoena duces tecum.* The Administrative Law Judge considering any application for a subpoena duces tecum shall issue the subpoena requested if he is satisfied the application complies with this section and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena duces tecum and no detailed or burdensome showing shall be required as a condition to the issuance of any subpoena.

(4) *Denial of application.* In the event the Administrative Law Judge determines that a requested subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly